

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

RAYMOND TARLTON, as guardian ad litem
for HENRY LEE MCCOLLUM, and J.
DUANE GILLIAM, as guardian of the estate of
LEON BROWN, *et al.*,

Plaintiffs,

v.

KENNETH SEALEY, both individually and in
his official capacity as the Sheriff of Robeson
County, *et al.*,

Defendants.

Case No. 5:15-CV-451-BO

**UNOPPOSED MOTION AND BRIEF IN SUPPORT OF
AMENDED JUDGMENT**

Plaintiffs Henry McCollum and Leon Brown, through their guardians, respectfully submit this Motion and Brief in Support of Amended Judgment pursuant to the Court's April 6, 2023 Order. *See* Dkt. 480. Mr. McCollum and Mr. Brown have waited over seven years to receive compensation from Defendants Leroy Allen and Kenneth Snead. To avoid further delay in collecting their damages award, Mr. McCollum and Mr. Brown no longer seek the \$1,500,000 portion of the jury's compensatory damages award that Defendants contend should be offset to account for prior statutory compensation awards from the State of North Carolina. Accordingly,

there are no disputed issues remaining for this Court to resolve. Plaintiffs request that the Court (1) enter an amended judgment for a total compensatory and punitive damages award of \$63.5 million and (2) deny as moot Defendants' request for an offset of \$1,500,000, Dkt. 437. Defendants do not oppose this request to amend the judgment and deny their motion as moot. A proposed amended judgment is attached hereto. In further support of their request, Plaintiffs state as follows:

1. On March 8, 2023, the United States Court of Appeals for the Fourth Circuit affirmed in part, reversed in part, and vacated in part the judgment of this Court, reducing Plaintiffs' \$75 million damages award by \$10 million. *See* Dkt. 476. It remanded the case to this Court to address one issue: whether the \$1.5 million that Plaintiffs received from the State of North Carolina under N.C.G.S. § 148-82 for their wrongful conviction and incarceration was from a collateral source under North Carolina law, and if not, to further reduce the compensatory damages award accordingly. *See id.* at 30.

2. This case has already taken up nearly forty years of Mr. McCollum's and Mr. Brown's lives. They filed this lawsuit seeking compensation from Defendants over seven years ago. *See* Dkt. 1. In the almost two years since the May 2021 jury verdict, Plaintiffs have yet to receive their damages award.

3. Additional proceedings associated with the \$1.5 million at issue on remand may further prolong the time that Mr. McCollum and Mr. Brown must wait to receive the compensation that they are owed for their suffering. Plaintiffs believe they are entitled to the \$1.5 million and maintain that this award comes from a "collateral source" under North Carolina law. But in the interests of finality and judicial economy, and to obviate the need for further litigation and potentially another two years of appeal, Plaintiffs do not contest this issue on remand. Defendants'

request for a further \$1.5-million offset is therefore moot and need not be resolved on the merits by this Court. *See, e.g., United States v. Passaro*, No. 5:04-CR-211-BO, 2005 WL 8160184, at *1 (E.D.N.C. Aug. 22, 2005) (dismissing various motions as moot after parties' agreement resolved underlying disputes).

4. Accordingly, the Court should enter an amended judgment of \$63.5 million in damages consistent with the Fourth Circuit's decision. *See F.T.C. v. Verity Int'l, Ltd.*, No. 00 Civ. 7422(LAK), 2007 WL 2489662 (S.D.N.Y. Sept. 4, 2007) (entering agreed-upon monetary judgment for less than original damages award on remand following appeal). As indicated in the attached proposed amended judgment, the amended judgement should specifically state that:

- Plaintiff Henry McCollum is entitled to recover: \$25.25 million in compensatory damages, \$3 million in punitive damages from Defendant Leroy Allen, and \$5 million in punitive damages from Defendant Kenneth Snead, plus post-judgment interest on the entire amount awarded.
- Plaintiff Leon Brown is entitled to recover: \$25.25 million in compensatory damages and \$5 million in punitive damages from Defendant Kenneth Snead, plus post-judgment interest on the entire amount awarded.

WHEREFORE Plaintiffs respectfully request that the Court deny Defendants' request for an offset of \$1,500,000, Dkt. 437, as moot and enter an amended judgment for \$63.5 million, plus post-judgment interest.¹

Respectfully submitted this 18th day of April, 2023.

Respectfully Submitted,

/s/ E. Desmond Hogan

¹ The Court's separate judgment on attorney's fees, Dkt. 457, was affirmed on appeal and therefore need not be amended.

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CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2023, I filed this Motion and Brief in Support of Amended Judgment with the Clerk of Court using the CF/ECF system, which will electronically serve this motion on both Plaintiffs' and Defendants' attorneys as follows:

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